The opinion in support of the decision being entered today was <u>not</u> written for publication and is <u>not</u> binding precedent of the Board.
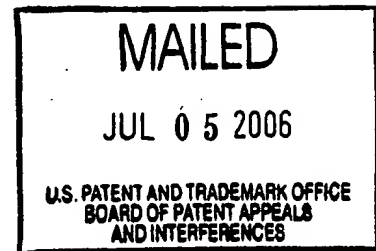
UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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<u>Ex parte</u> ALEC MILOSLAVSKY

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Appeal No. 2006-1092
Application No. 08/948,530

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ON BRIEF

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES
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Before JERRY SMITH, BARRY, and MACDONALD, <u>Administrative Patent Judges</u>.

JERRY SMITH, <u>Administrative Patent Judge</u>.

<u>DECISION ON APPEAL</u>

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 6-9 and 14-16, which constitute all the claims pending in this application.

The disclosed invention pertains to an Internet-Protocol Network Telephony routing system with a routing processor for routing calls based on information stored in an associated database regarding operation and status of possible destinations for the call. In some embodiments, destinations are call

centers and information in the database is collected and processed at the call

centers. Information is collected, processed, and forwarded to the database to

enhance call-routing efficiency and accuracy.

Representative claim 6 is reproduced as follows:

6. An Internet Protocol Network Telephony (IPNT) call-routing system for routing incoming IPNT calls to at least one agent workstation in an IPNT-capable call center, comprising:

an initial call-processing system in the Internet receiving IPNT calls from customers in the Internet, and including a Service Control Point (SCP) processor routing the incoming IPNT calls to selected agent addresses at the at least one call center;

characterized in that the SCP processor uses activity information, including one or more of call volume, agent status, and agent skills, received from the at least one call center to select the agent addresses at agent workstations in the at least one call center to route the incoming IPNT calls.

The examiner relies on the following references:

6,064,730	Ginsberg	May 16, 2000 (filed Jun. 9, 1997)
6,044,144	Becker et al. (Becker)	Mar. 28, 2000 (filed Feb. 7, 1997)
5,884,032	Bateman et al. (Bateman)	Mar. 16, 1999 (filed Sep. 25, 1995)
5,848,143	Andrews et al. (Andrews)	Dec. 8, 1998 (filed Nov. 5, 1996)

The following rejections are on appeal before us:

1. Claims 6-8 stand rejected under 35 U.S.C. § 103(a) as being

unpatentable over Ginsberg in view of Becker.

2. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ginsberg in view of Becker and Bateman.

3. Claims 6-9 and 14-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Andrews in view of Becker.

Rather than repeat the arguments of appellant or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we affirm.

We consider first the rejection of claims 6-8 under 35 U.S.C. § 103(a) based on Ginsberg and Becker. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal

conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d

1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the

factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17,

148 USPQ 459, 467 (1966). The examiner must articulate reasons for the

examiner's decision. In re Lee, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1434

(Fed. Cir. 2002). In particular, the examiner must show that there is a teaching,

motivation, or suggestion of a motivation to combine references relied on as

evidence of obviousness. Id. at 1343. The examiner cannot simply reach

conclusions based on the examiner's own understanding or experience - or on

his or her assessment of what would be basic knowledge or common sense.

Rather, the examiner must point to some concrete evidence in the record in

support of these findings. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693,

1697 (Fed. Cir. 2001). Thus the examiner must not only assure that the requisite

findings are made, based on evidence of record, but must also explain the

reasoning by which the findings are deemed to support the examiner's

conclusion. However, a suggestion, teaching, or motivation to combine the

relevant prior art teachings does not have to be found explicitly in the prior art, as

the teaching, motivation, or suggestion may be implicit from the prior art as a

whole, rather than expressly stated in the references. The test for an implicit

showing is what the combined teachings, knowledge of one of ordinary skill in the

art, and the nature of the problem to be solved as a whole would have suggested

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to those of ordinary skill in the art. In re Kahn, 441 F.3d 977, 987-88, 78

USPQ2d 1329, 1336 (Fed. Cir. 2006) citing In re Kotzab, 217 F.3d 1365, 1370,

55 USPQ2d 1313 (Fed. Cir. 2000). See also In re Thrift, 298 F. 3d 1357, 1363,

63 USPQ2d 2002, 2008 (Fed. Cir. 2002). These showings by the examiner are

an essential part of complying with the burden of presenting a prima facie case of

obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444

(Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to

overcome the prima facie case with argument and/or evidence. Obviousness is

then determined on the basis of the evidence as a whole and the relative

persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039,

228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223

USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189

USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant

have been considered in this decision. Arguments which appellant could have

made but chose not to make in the brief have not been considered and are

deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

Regarding independent claim 6, the examiner's rejection essentially finds

that Ginsberg teaches every claimed feature except for a service control point

(SCP) processor that receives agent information from a plurality of call centers

and stores such information in a database to route incoming calls to the call

center [answer, pages 3 and 4]. The examiner cites Becker as disclosing a call

center router and data server with a database that stores information about the status of the agents at the call center [answer, page 4]. The examiner finds that, in view of Becker, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ginsberg to couple a plurality of call centers with the Internet for reporting the agent information to a data server and use such information to route incoming calls to the call center to balance the load between call centers [answer, page 4].

Appellant argues that Ginsberg does not teach or have motivation for an initial call-processing system in the Internet including a service control point that receives agent information from a plurality of call centers for storing in the database to route the incoming calls to the call center [brief, page 14]. According to appellant, Ginsberg's routing system is at the customer premises serving only that customer. Because the customer provides all routing functions and decisions, appellant argues that no need exists for central computerized routing intelligence at the Internet level [id.].

The examiner responds that Ginsberg's control and signaling module 275 reads on the claimed SCP processor. The examiner notes that the control and signaling module is coupled to databases 352, 354, and 356 that provide information that is used to route incoming calls from server 200 to an available agent at call center 250 [answer, page 6]. The examiner also contends that because incoming calls are routed to agents using Internet protocol, the components are at the Internet level [id.].

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Appellant also argues that Becker does not receive agent information from multiple call centers for storing in a database to route incoming calls in a call center. According to appellant, Becker teaches that for each call received at the network switch 30, the individual call centers are queried for agent availability, load status, etc. Thus, Becker does not teach storing call status information or any other call routing information in a database at the Internet network level [brief, page 15]. Appellant also argues that Becker lacks any teaching of Internet equipment capable of performing the database and SCP functions at the Internet level [id.].

The examiner responds that Becker's computer/telephony interface (CTI) data collection server 38 collects data from call centers from CTI server 60 via Internet 26 [answer, pages 6 and 7]. According to the examiner, the call center router in Becker uses this information to determine which call center has an available agent and route the call accordingly [answer, page 7].

We will sustain the examiner's rejection of claims 6-8. As an initial matter, we agree with the examiner's interpretation that "an initial call-processing system in the Internet receiving IPNT calls from customers in the Internet" (emphasis added) does not preclude the Internet-based system of Ginsberg in view of the scope and breadth of the claim language.

Ginsberg teaches that a "call" originates from the customer's "interactive display device" 175 (e.g., a computer/display device) that is provided with an

Internet browser program [Ginsberg, col. 3, lines 10-21]. Control and signaling module 275 obtains call center status information from call center 250, which can be an Internet-based switch [Ginsberg, col. 4, lines 2-6]. If an agent is currently available, the control and signaling module enables the switching element 250 to establish a communications link from the customer's telephone 150 to the agent. Notably, the communications link may be Internet-based packet communication [Ginsberg, col. 4, lines 20-37]. In our view, such an Internet-based call routing system fully reads on "an initial call-processing system in the Internet receiving IPNT calls from customers in the Internet" as claimed.

Although appellant argues that Ginsberg's routing system is at the customer premises and serves only that customer and thus does not require central computerized routing intelligence including SCP processors, we note that appellant's arguments are not commensurate with the scope of the claim language. In short, Ginsberg's Internet-based call routing is "in the Internet" given the limitation its broadest reasonable interpretation. Moreover, we agree with the examiner that Ginsberg's control and signaling module 275 reads on the claimed SCP processor given the term its broadest reasonable interpretation.

Although the examiner indicates that Ginsberg differs from claim 6 in calling for an SCP processor that receives agent information from a plurality of call centers and storing such information in a database to route incoming calls to the call center [answer, pages 3 and 4], we find no such limitations in claims 6-8.

Claim 6 merely recites, in pertinent part, routing incoming calls to "selected agent addresses at [the] at least one call center" [emphasis added]. Such language does not require a plurality of call centers, but rather one or more call centers. The call routing system of Ginsberg fully reads on this limitation. Moreover, we find no recitation of a database in claims 6-8. In our view, the teachings of Ginsberg appear anticipatory for at least claim 6.

Nevertheless, obviousness rejections can be based on references that happen to anticipate the claimed subject matter. In re Meyer, 599 F.2d 1026, 1031, 202 USPQ 175, 179 (CCPA 1979). We agree with the examiner that the teachings of Becker are reasonably combinable with Ginsberg essentially for the reasons stated by the examiner.

Becker's CTI data collection server 38 continuously collects data from each call center 50 via a CTI server 60 located at each call center [Becker, col. 8, lines 45-55]. Call center router 36 then retrieves this data from the CTI data collection server via wide area network 26 to determine if the intended destination call center has sufficient current availability to accept the call. Availability is determined by total number of agent workstations, agents currently handling calls, current number of calls in the queue, and the rate of incoming calls [Becker, col. 8, lines 57-63]. Data is also collected regarding agent availability [Becker, col. 8, line 64 - col. 9, line 10]. Since both Becker and Ginsberg are in the same field of endeavor, we find Becker's teaching reasonably

combinable with Ginsberg so that calls could be effectively routed to an available call center selected from multiple call centers.

In addition, contrary to appellant's argument, we find that Becker reasonably teaches storing information used to route incoming calls at the Internet network level. In particular, we note that Becker's call center router 36, CTI data collection server 38, and each call center's CTI server are connected to wide area network (WAN) 26. Thus, data collection and retrieval for call routing purposes as described above is performed at the WAN level which reasonably suggests the Internet network level to the skilled artisan. The examiner's obviousness rejection is therefore sustained.

Furthermore, since appellant has not separately argued the patentability of dependent claims 7 and 8, these claims fall with independent claim 6. The rejection of claims 7 and 8 is therefore sustained.

Likewise, we will sustain the examiner's rejection of dependent claim 9 under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Ginsberg in view of Becker and Bateman. We find that (1) the examiner has established at least a prima facie case of obviousness for this claim on pages 4 and 5 of the answer, and (2) appellant has not persuasively rebutted the examiner's prima facie case. The rejection is therefore sustained.

We now consider the rejection of claims 6-9 and 14-16 under 35 U.S.C. § 103(a) based on Andrews and Becker. Regarding independent claims 6, 14, and

16, the examiner's rejection essentially finds that Andrews discloses every

claimed feature except for (1) the database to be located in the Internet, (2) the

database located remote from the call centers, and (3) routing incoming calls to

the call centers [answer, page 5]. The examiner cites Becker as disclosing (1) an

SCP processor that stores information about the call centers, and (2) a CTI

processor for collecting data about the call center for routing incoming calls

[answer, pages 5 and 6]. The examiner finds that, in view of Becker, it would

have been obvious to one of ordinary skill in the art at the time of the invention to

modify Andrews to locate the database in Andrews remote from the call centers

to share information among the call centers and enhance reliability [answer, page

6].

Appellant argues that Andrews does not teach any intelligent routing at the

Internet level because the routing server (48, 480) is at the customer premises

[brief, page 15]. Appellant further argues that Andrews does not teach or

suggest an initial call processing system in the Internet including an SCP

processor as claimed [brief, pages 16 and 17]. Appellant also argues that

Andrews' database is not connected to a routing server in the Internet and does

not store processed information about IPNT call centers as claimed. The

examiner responds that Andrews teaches (1) connecting database 54 to routing

server 48 in Fig. 2, and (2) connecting database 476 to routing server 480 in Fig.

10 that routes incoming calls to the call center via the Internet [answer, page 7].

The examiner further notes that an SCP processor is a device that includes a database for receiving an incoming message and selects the destination within the database for routing the call [answer, pages 6 and 7]. With this construction, the examiner concludes that the combined teachings of the cited prior art disclose an SCP processor in the Internet [answer, page 7].

Appellant also argues that Becker does not receive agent information from multiple call centers to store in a database to route incoming calls [brief, page 17]. The examiner responds that Becker's system collects call center data at the network level and uses this data to route incoming calls to the appropriate call center depending on agent availability [answer, page 7].

We will sustain the examiner's rejection of claims 6-9 and 14-16. We find that appellant has not persuasively rebutted the examiner's prima facie case of obviousness. In a first embodiment, Andrews discloses a system for optimally routing calls to agents in a workgroup that utilizes a central controller 30. As shown in Fig. 2, central controller 30 comprises a routing engine 48 associated with a database that comprises database manager 52 and database storage means 54. The routing engine uses data retrieved from the database to calculate the optimal way to route calls in the system including routing the call depending on agent availability [Andrews, col. 6, lines 28-62; Fig. 2].

In the embodiment of Fig. 9, Andrews discloses a routing system that, among other things, routes Internet calls placed by Internet callers 410, 412 to

agent systems 402, 404, 406 via Internet network 408 [Andrews, col. 11, lines 54-55; Fig. 9]. Central controllers 30A', 30B' control individual Internet servers within the Internet 408 to optimally route Internet calls through the Internet 408 to the agent systems [Andrews, col. 11, lines 60-64]. See also Andrews, col. 18, lines 13-27 (text of claim 1). Notably, such Internet-based call routing is conducted in a manner that is functionally similar to that used by the central controllers to optimally route calls through networks 12, 14, 16 to agent systems 402, 404, 406 [Andrews, col. 11, lines 60-67].[1] In our view, Andrews' Internet-based call routing system fully reads on a call-processing system in the Internet including an SCP processor and an Internet routing server in the Internet with a database connected to the routing server as claimed.

Furthermore, we find that the examiner's reliance on Becker for the teaching of using a CTI data collection server for collecting data regarding the status of agents from multiple call centers at the network level for call routing is reasonable and the reference is reasonably combinable with Andrews. As noted previously, Becker's routing engine uses data retrieved from the database to calculate the optimal way to route calls to multiple call centers. Specifically, Becker's CTI data collection server 38 continuously collects data from each call

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[1] We also note that Andrews states that central controllers 30A', 30B' operate in a substantially similar manner to that of controllers 30A and 30B of another embodiment [Andrews, col. 11, lines 57-67]. In this embodiment, Andrews shows in Fig. 6A that primary central controller 30A comprises a database manager 52A and database storage means 54A similar to the first embodiment. Furthermore, Andrews notes that the operation of system 200 in this embodiment is substantially similar to system 10 of the first embodiment [Andrews, col. 8, lines 51-55].

center 50 via a CTI server 60 located at each call center [Becker, col. 8, lines 45-55]. Call center router 36 then retrieves this data from the CTI data collection server via wide area network 26 to determine if the intended destination call center has sufficient current availability to accept the call. Since both Andrews and Becker are in the same field of endeavor, we find Becker's teaching reasonably combinable with Andrews so that calls could be effectively routed to an available call center selected from multiple call centers.

In summary, we have sustained the examiner's rejections with respect to all claims on appeal. Therefore, the decision of the examiner rejecting claims 6-9 and 14-16 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

JERRY SMITH)
Administrative Patent Judge) .
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